

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

WILLIE JONES, 03-B-0828,

Petitioner,

v.

T. POOLE,

Respondent.

DECISION & ORDER

05-CV-6378P

On July 21, 2005, petitioner in the above-captioned matter filed a petition for a federal writ of habeas corpus. (Docket # 1). Thereafter, on October 5, 2005, petitioner moved this Court for the appointment of counsel. (Docket # 4). Ten days later, respondent moved for an extension of time in which to file an answer to the petition. (Docket # 5). By Decision and Order dated October 17, 2005 (Docket # 6), this Court denied petitioner's request for the appointment of counsel because no evidentiary hearings are required in this matter, petitioner is not seeking to vacate or set aside a sentence of death and because petitioner has failed to demonstrate that the interests of justice require the appointment of counsel at this time. *See* 21 U.S.C. § 848(q)(1)(4)(B); Rules Governing Section 2254 Cases in the United States District Courts, Rule 8(c); *McFarland v. Scott*, 512 U.S. 849 (1994). On the following day, this Court granted respondent's motion for an extension of time to file an answer to the petition, requiring such answer to be filed by November 14, 2005. (Docket # 7).

By motion dated October 18, 2005, apparently before he was made aware of the above Orders, petitioner moved this Court for an order of default to be entered against respondent; as well as an order granting petitioner immediate relief; or in the alternative for an

order granting petitioner sixty days in which to file a reply to respondent's answer, and for the appointment of counsel. (Docket # 8). Because respondent's time to file an answer has not yet expired, petitioner's motion for an order of default and immediate relief (**Docket # 8**) are hereby **DENIED as MOOT**. Furthermore, for the reasons already set forth in the October 17, 2005 Decision and Order, petitioner's motion for the appointment of counsel (**Docket # 8**) is **DENIED**. Finally, Petitioner's motion for sixty days in which to reply to respondent's answer (**Docket # 8**) is **GRANTED**. Any reply to respondent's answer shall be filed on or before **January 13, 2006**.

IT IS SO ORDERED.

s/Marian W. Payson

MARIAN W. PAYSON
United States Magistrate Judge

Dated: Rochester, New York
November 3, 2005.